

Legal Notice

NOTICE OF TENTATIVE DETERMINATION OF 401 CERTIFICATION WITH CONDITIONS

The Montana Department of Environmental Quality (Department) is providing notice of its tentative determination to issue a certification with conditions pursuant to Section 401 of the federal Clean Water Act, 33 U.S.C. 1341, to Symbiotics, L.L.C. ("Symbiotics") for a new hydroelectric facility on the Clark Canyon Dam in south-west Montana.

Concerned persons may access the tentative certification at the Department's WEB site <http://www.deq.mt.gov/wqinfo/Standards/Index.asp>, or request a copy of the tentative determination of 401 certification with conditions, or submit their data, views, or arguments in writing to the Department of Environmental Quality, Attention David L. Feldman, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; or faxed to (406) 444-6836; or e-mailed to bbukantis@mt.gov, no later than **9 March 2009**. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

Unless a written request for a hearing is filed with the Department by 19 February 2009 the Department's decision will be final based on all information we have received, including public comment, but without a public hearing.

Symbiotics has applied to the Federal Energy Regulatory Commission (FERC) for licensing of this new hydroelectric facility ("the Project") under the Federal Power Act, (16 USC §791a et seq.). FERC has given the project the number 12429. Symbiotics's address is P.O. Box 535, Rigby, ID 83442.

Section 401(a) of the federal Clean Water Act, 33 USC §1341, requires that any applicant for a federal license or permit to conduct an activity which may discharge into navigable waters must provide the licensing or permitting agency with a certification from the state in which the discharge originates. The certification must state that any such discharge complies with certain sections of the Clean Water Act and corresponding state water quality laws including state water quality standards. Section 401(d) further provides that the certification must set forth any limitations or conditions necessary to assure the applicant complies with any applicable effluent limitations, other limitations, monitoring requirements and other appropriate requirements of state law related to water quality.

The Department of Environmental Quality has authority to issue 401 certifications for the State pursuant to Administrative Rules of Montana ARM 17.30.101 through 109.

The Beaverhead River and Clark Canyon Reservoir at the site of this hydroelectric facility are classified B-1. Waters classified B-1 must be maintained suitable for drinking, culinary and food processing purposes after conventional treatment; bathing, swimming, and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply. ARM 17.30.623.

On December 31, 2008, Symbiotics submitted its application to the Department for 401 certification of its Clark Canyon Hydroelectric Project FERC No. 12429 ("the Application"). The Department has completed its examination of the Application, Pre-Application Document (PAD), the Clark Canyon Preliminary Licensing Proposal, studies submitted in support of the Application and all other available pertinent information and finds there is sufficient information for the Department to reach its decision of tentative certification as explained in the notice of determination referenced above.